order of prohibition to stay proceedings in respect of Case No. 5 of 1968. There is nothing in the affidavit to show what else the Industrial Court has to do to perfect the order. The term "interim award" may perhaps be misleading. The so-called interim award is, in fact, a final award. It becomes final and conclusive and binding on the company as soon as the result of the secret ballot is announced.

I shall deal briefly with the question of jurisdiction. Recognition of a trade union is governed by Part III of the Industrial Relations Act. Under section 8, claim for recognition shall be made to the employer. If the employer grants recognition, there the matter ends. If he does not or for *any* reason refuses to grant recognition, the trade union may report the matter to the Minister and the Minister may either take steps to resolve it, or, he may refer it to the Industrial Court for a decision. If he makes a reference, a jurisdiction is conferred on the Industrial Court to deal with the subject of recognition. Manifestly, the Industrial Court cannot of its own volition entertain any direct claim for recognition. Under section 9, the court may when deciding the question join other competing trade unions as parties to the proceedings.

There is no dispute that the claim for recognition as in Case No. 5 of 1968 was referred by the Minister to and, consequently, jurisdiction was conferred on the Industrial Court to adjudicate. Having regard to the whole tenor of the Act, section 10 could only mean that where recognition has been accorded to any class of workmen either by the court or otherwise (namely, by the employer) no other trade union shall make a claim *to the employer* under section 8 for recognition in respect of the same workmen or class of workmen within a period of two years. A refusal by the company to grant the claim on ground of this limitation may, perhaps, be a ground for a request to the Minister for reference. The Minister's discretion seems to be unfettered by section 10. Once a reference is properly made, the Industrial Court obtains jurisdiction and the jurisdiction is not, in my view, vitiated or diminished by the initial lack of *locus standi* of the claimant when he makes the claim.

Accordingly, the motion will be refused with costs

Application dismissed.

Solicitors: *Shearn, Delamore & Co.; Shook Lin & Bok; R. Rajasingam & Co.*

YAP HONG THIN & ANOR. v. SEENEVESAM

[O.C.J. (Pawan Ahmad J.) March 14, 1969]

[Ipoh — Originating Motion No. 3 of 1968]

Landord and Tenant — Recovery of possession of premises — Whether application may be made by origiting motion — R.S.C. 1957, O. 52 r. 1 — Control of Rent Act, 1966, s. 16(1).

Practice and Procedure — Application by originating motion for recovery of possession of premises — Question of fact — Whether proper.

This was an application by originating motion for the recovery of possession of premises occupied by the respondent. The respondent raised a preliminary objection that the application by originating motion was irregular.

Held: an application for recovery of possession of premises by originating motion is not irregular, but the questions of fact in this case can only be determined by the examination and cross-examination of witnesses in open court and therefore the application was not suitable or proper and must be dismissed with costs.

Cases referred to:—

(1) *Re Meister Lucius & Bruning, Ltd.* (1914), W.N. 390.

(2) *E'Singam* v. *Dr. Sundram & Ors.* [1960] M.L.J. 91.

(3) *Ong Yok Chu & Anor.* v. *Yong Teck Fong & Anor.* [1960] M.L.J. 292.

ORIGINATING MOTION.

N. Sharma for the applicants.

Dato' S.P. Seenivasagam for the respondent.

Cur. Adv. Vult.

Pawan Ahmad J.: This is an application by originating motion for the recovery of possession of premises occupied by the respondent on the ground that the respondent has been in arrears in the payment of rent lawfully due for a period of more than 14 days. The 1st applicant's affidavit in support of the motion states that the premises were let out to the respondent at a monthly rental of $112 payable in advance on the first day of each month of tenancy on the terms and conditions set out at the back of the receipt. The relevant terms and conditions of tenancy are contained in clause 2 and clause 6. Clause 2 reads:—

"The tenancy is a month to month tenancy. All rents shall be due on the 1st day of the month and shall be paid in advance without demand."

and clause 6 reads:—

"Any breach of the above terms and conditions by the tenant, shall render the tenancy to be terminated by the landlords upon giving one month's notice."

The 1st applicant also states that the respondent has been served with a month's notice terminating the tenancy on 31st October, 1967 because the respondent has been in arrears in the payment of rent for a period of more than 14 days.

The respondent's attorney in his affidavit in reply states that the application by way of motion is misconceived. The respondent's attorney also states that the terms and conditions printed on the reverse of the receipts were the unilateral acts of the applicants and not binding on the respondent. Further, this affidavit states that the respondent has not been in arrears of rent. It also states that neither the applicants nor their servants or agents met the respondent or his attorney to collect rent. This affidavit further states that it was the duty and practice of the 1st applicant or his agent to call personally at the premises for rent and it was the respondent's attorney who personally handed over the rent.

On the other hand, the 1st applicant in his reply states that he has never received any rent from the respondent's attorney but admits that at times the rent was collected at the premises.

At the outset of the trial counsel for the respondent raised a preliminary objection on the ground that the present application by motion is irregular and not authorised by any rule of court or by any specific written law and therefore the application should be dismissed. It is his contention that because of the definition of "proceedings" in section 2 of the Rule Committee Ordinance, 1955, all civil proceedings other than those provided by O. 52 r. 1 of the Rules of the Supreme Court should be by way of action in accordance with O. 1 r. 1 of the Rules of the Supreme Court.

Counsel for the applicants states that as this application is for the recovery of possession of premises it falls under section 16(1) of the Control of Rent Act, 1966, and under this provision an application has to be made to a court. He therefore argues that this application is in order in view of the words "any proceeding" used in section 13 of the Control of Rent Ordinance, 1956, and by reason of the commentary by *Craies*, 6th Edition, on Statute Law at page 400 under the heading "Pending actions affected by new procedure or provision as to costs".

In *re Meister Lucius & Bruning, Ltd.*[1] it was held that where a Statute provides for an application to the court without specifying the form in which it is to be made, and the rules do not expressly provide for any specific procedure, such application may usually be made by originating motion. Section 16(1) of the Control of Rent Act, 1966, also states that all applications for the recovery of possession of premises shall be made to a court and no procedure for making the application is provided for in the said Act or its Rules. Therefore in my view an application for recovery of possession of premises by originating motion is not irregular.

In *E'Singam* v. *Dr. Sundram & Ors.*[2] it was held that the question at issue being one of fact, it had to be determined in open court and was not suitable for determination by the procedure of originating summons. Again, in *Ong Yok Chu & Anor.* v. *Yong Teck Fong & Anor.*,[3] it was held (a) it is contrary to all decided authorities to try disputed issues of fact on an originating summons; and (b) the plaintiffs should they so desire to obtain the relief they seek ought to proceed by writ. Similarly, it is apparent from the affidavits in the present case that there are a number of facts in issue which are in dispute and, in my view, these questions of facts can only be determined by the examination and cross-examination of witnesses in open court and therefore the present application by originating motion is not suitable or proper. The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *N. Sharma; S. Seenivasagam & Sons.*

ASSA SINGH v. MENTRI BESAR, JOHORE

[F.C. (Azmi L.P., Ong Hock Thye C.J. (Malaya), Suffian and Gill F.JJ. and Raja Azlan Shah J.) March 17, 1969]

[K.L. — Federal Court Special Case No. X.1 of 1968]

Constitutional Law — Constitution of Malaysia, arts, 5, 9 & 162 — Pre-Merdeka law inconsistent with Constitution — Power of court to apply law with such modifications as may be necessary to bring it into accord with provisions of Constitution — Deprivation of personal liberty — Right to be informed of grounds of arrest, to consult and be defended by legal practitioner of his choice and to be produced before a magistrate — Restricted Residence Enactment (Cap. 39).

Restricted Residence Enactment (Cap. 39), s. 5 — Power of Minister to make order on subjective belief — Whether such power can be delegated.

In this case the learned judge at Johore Bahru referred the following question to the Federal Court under section 48 of the Courts of Judicature Act, 1964: "Are the provisions of the Restricted Residence Enactment authorising the detention and/or the deprivation of liberty of movement contrary to the provisions of the Federal Constitution and void?"

The applicant in this case had been arrested and detained by the order of the Mentri Besar of Johore under the Restricted Residence Enactment in exercise of the powers purported to be delegated to him by the Minister of Interior and Justice. It was argued in this case that the Enactment has no provision: (i) for informing the person concerned of the grounds of his arrest and detention; (ii) for presenting him before a magistrate or for an enquiry at which the detained person could meet the allegations against him; (iii) for review; (iv) for limitation of the period of detention. Because of these reasons it was submitted that the provisions of the Enactment were inconsistent